

STATE OF MICHIGAN
COURT OF APPEALS

PROPERTY AND CASUALTY INSURANCE
COMPANY OF THE HARTFORD and
SEDGWICK CLAIMS MANAGEMENT
SERVICES,

UNPUBLISHED
April 22, 2010

Plaintiffs-Appellees,

v

DEPARTMENT OF TRANSPORTATION,

No. 285749
Court of Claims
LC No. 08-000020-MZ

Defendant-Appellant.

Before: METER, P.J., and MURPHY, C.J., and ZAHRA, J.

MURPHY, C.J. (*dissenting*).

Because *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007), did not construe the language in MCL 600.6431(3), and because our Supreme Court has evidently decided not to extend the holding in *Rowland* to MCL 600.6431(3), I am not prepared to disavow *May v Dep't of Natural Resources*, 140 Mich App 730; 365 NW2d 192 (1985).¹ In *May*, this Court held that a plaintiff's claims are not barred by failure to comply with MCL 600.6431(3) unless the defendant established that it was prejudiced by the noncompliance. *May* has not been reversed or explicitly overruled.

Rowland interpreted MCL 691.1404(1), which differs from the statute at issue here, MCL 600.6431(3).² MCL 691.1404(1) provides that compliance with the notice provision is "a condition to any recovery for injuries sustained by reason of any defective highway;" however, MCL 600.6431(3) does not contain comparable "recovery precondition" language. More

¹ The majority correctly recognizes that the unpublished opinions dealing with statutory notice requirements not specifically addressed in *Rowland* lack precedential effect under MCR 7.215(C)(1).

² MCL 600.6431(3) provides that "[i]n all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action."

importantly, our own Supreme Court does not appear to be prepared to extend the holding in *Rowland* to MCL 600.6431(3). In *Beasley v Michigan*, 483 Mich 1025; 765 NW2d 608 (2009), the Michigan Supreme Court denied an application for leave to appeal relative to an order of this Court that had denied leave to appeal, which in turn pertained to an order by the Court of Claims denying summary disposition to the state. As reflected in a concurring opinion issued by CHIEF JUSTICE KELLY in *Beasley*, the state brought the motion for summary disposition on the basis that the plaintiff, who had been injured in a motor vehicle accident involving a state-owned vehicle, failed to comply with the notice requirement of MCL 600.6431(3). Thus, while I recognize that Supreme Court orders denying leave do not have precedential value, the order does appear to signal a mindset that *Rowland* is inapplicable to MCL 600.6431(3).³ Indeed, in *Beasley*, CHIEF JUSTICE KELLY specifically expressed her opinion that “*Rowland* does not dictate the outcome here because it involves a different statutory provision.” *Beasley*, 483 Mich at 1025.

Until the Supreme Court decides to substantively address the impact of *Rowland* on MCL 600.6431(1), which I encourage it to do as soon as possible, I will continue to recognize and respect this Court’s decision in *May*. In my opinion, it defies logic to dismiss plaintiffs’ claims here, where in *Beasley* the plaintiff is being permitted to proceed in the Court of Claims with the apparent blessing of the Supreme Court.

I respectfully dissent.

/s/ William B. Murphy

³ A concern about the change of course in *Rowland* relating to a prejudice requirement was evident in the dissenting opinion of JUSTICE CAVANAGH in *Rowland*, where he stated:

Today this Court overrules a portion of our governmental immunity law that has been in place for over 30 years. Because I am not convinced that *Hobbs v Dep’t of State Hwys*, 398 Mich 90; 247 NW2d 754 (1976), and *Brown v Manistee Co Rd Comm*, 452 Mich 354; 550 NW2d 215 (1996), [which imposed a prejudice requirement], were wrongly decided, I dissent from the majority’s decision to overrule these cases. I believe that the principles of stare decisis mandate that we continue to interpret MCL 691.1404(1) in accordance with *Hobbs* and *Brown*. [*Rowland*, 477 Mich at 270-271.]